



MITCHELL E. DANIELS, JR., *Governor*

JAMAL L. SMITH, *Executive Director*

ICRC No. EMse11070373  
[REDACTED]

[REDACTED],  
Complainant,

vs.

NICK'S PATIO,  
Respondent.

### **NOTICE OF FINDING**

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred. 910 IAC 1-3-2(b)

On July 7, 2011, [REDACTED] ("Complainant") filed a complaint with the Commission against Nick's Patio ("Respondent") alleging discrimination on the basis of sex (pregnancy), in violation of the Indiana Civil Rights Law (IC 22-9, et seq) [REDACTED]. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent failed to hire Complainant because of the fact that she was pregnant. In order to prevail on such a claim, Complainant must show that: (1) she is a member of a protected class; (2) she applied for and was qualified for the position; (3) she was denied the position; and (4) evidence establishes reason to believe that Complainant's pregnancy had something to do with her not being hired.

Complainant is a member of a protected category because she is female and because she was pregnant at the time she applied for employment with Respondent. She is qualified to perform the job of a waitress and she has performed similar jobs in the past. There is no question about the fact that Respondent did not hire her for the job.

The application for employment that Complainant filled out on June 10, 2011, specifically asked if Complainant was or was not pregnant. Additionally, someone, presumably an employee of Respondent, wrote on the application that Complainant had children. For these reasons, it appears that Respondent was, in fact, considering whether or not female applicants were pregnant when deciding whether to hire someone for a job as waitress or hostess. Finally, witness testimony provides support for Complainant's contention that one of Respondent's employees refused to consider Complainant for employment after Complainant told her she was pregnant.



Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice may have occurred.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. IC 22-9-1-18, 910 IAC 1-3-5 The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

January 23, 2012

Date

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Joshua S. Brewster, Esq.,  
Deputy Director  
Indiana Civil Rights Commission